IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15400 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JITENDRA BABULAL CHAVDA - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1, 3,
RULE SERVED BY DS for Respondent(s) : 2,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 21/09/2005

ORAL JUDGMENT

1. That the order of detention dated 15th June, 2005 passed by the District Magistrate, Kutch-Bhuj, in exercise of powers under Subsection (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, (for short, 'the Act') detaining the detenue with a view to prevent from indulging or acting in a manner prejudicial to the maintenance of the supply of wheat, rice and Blue Kerosene essential to the community.

As per the requirement of Subsection 1 of Section 8 of the Act grounds have been supplied to the detenue alongwith the order of detention mentions about prejudicial activities carried out by the detenue, particularly with regard to the distribution of blue kerosene meant for public distribution system. It also refers about certain conditions attached with the license and the provisions of the Essential Commodities Act alongwith various orders made thereunder and seizure of 1892 ltr of kerosene, which was unauthorizedly purchased and stored by the petitioner detenue.

Considering the above aspects and involvement of the detenue, the detaining authority has reached to a subjective satisfaction that the materials do exist with the detaining authority to exercise powers under Subsection (2) of Section 3 of the Act.

2. Shri H.R.Prajapati, learned advocate for the detenue after referring to the contents of the order of detention and grounds, submitted that the order of detention dated 15th June, 2005 is challenged on various grounds as contained in the petition, however, on the basis of the record available, he restricted his challenge on the ground of delay in forwarding the representation dated 19th July, 2005 submitted by the detenue to various authorities and forwarding the same by the detaining authority, though received by it only on 25th July, 2005.

It is evident, according to the learned advocate for the petitioner that, the affidavit in reply filed by one Shri H.C.Kadia, Deputy Secretary to the Government of Gujarat, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, in para-5 of the reply has deposed that the representation dated

19.07.2005 made by the relative of the detenue and addressed to the District Magistrate, was forwarded by the District Magistrate, vide their letter dated 5th August, 2005 to the State Government, which was in turn received by the Food Civil Supply and Consumer Affairs Department of the State of Gujarat on 10th August, 2005.

This fact is not clearly borne out from the affidavit in reply filed by the competent authority dated 19th September, 2005 and it states that the representation dated 19th July, 2005 submitted by one Shri Pravinbhai Dhanjibhai Solanki was received by the office on 25th July, 2005 **which has been sent to the concerned authorities** accordingly for further action.

In view of the above factual aspects, Shri H.R.Prajapati, learned advocate for the

petitioner has contended that there is no reasonable explanation of the delay caused in the office of the detaining authority while forwarding the representation, which was received by the said office on 25th July, 2005 and received by the State Government, Food Civil Supplies and Consumer Affairs Department on 5th August, 2005. There is a delay of at least 10 days, which remained unexplained at all much less reasonably.

He has further submitted the averments contained in the affidavit in reply filed by the detaining authority vaguely indicates that the representation is forwarded to various authorities, meaning thereby it is forwarded not to one authority but all authorities as per the requirement of law. At the same time, one more affidavit is filed by A.K.Ganguly, Under Secretary, Department of Consumer Affairs, Food and Public Distribution, Union of India in

para-5 stated that the representation dated 19th July, 2005 was not received at all by the concerned section of the said department. In the circumstances, according to the learned advocate for the detenue a valuable right of the detenue to make an effective and purposeful representation and expeditious consideration and decision thereon by the authorities and alongwith the unexplained delay of forwarding the representation are sufficient enough to quash and set aside the order of detention. According to him, in the matter of law or a statute framed or detaining a person, as required by Article 22(5) of the Constitution of India enshrined the safeguards for effective and purposeful representation and expeditious decision on representation submitted by the detenue.

3. In the present case, though the representation was received by the detaining authority on 25th

July, 2005, it was forwarded to the State Authorities only on 5th August, 2005 and, therefore, the delay of about 10 days is a fatal and continuance of detention on this ground alone required to be interfered with.

4. The learned Assistant Government Pleader Shri H.B.Punani has submitted that so far as State Government is concerned, as per the affidavit filed by the Deputy Secretary on receipt of the representation, there was expeditious disposal of the said representation and the detenue was informed about rejection of his representation vide letter dated 12th August, 2005. However, she was unable to justify or explain it reasonably as to why there was delay of 10 days in forwarding representation by the detaining authority to the State Government, though the representation was received on 25th July, 2005 and it was finally dispatched on 5th August,

2005.

5. Shri M.I.A.Shaikh appearing for the respondent no.4 has placed reliance on the affidavit in reply filed by the Under Secretary Department of Consumer Affairs Food and Public Distribution, Union of India.

6. Considering the rival submissions of the learned advocates for the parties and on perusal of the records of the case including the affidavits filed by various authorities, I am inclined to accept the submission of learned advocate for the petitioner Shri Prajapati, inasmuch as, there is unexplained delay of about 10 days on the part of the detaining authority in forwarding the representation submitted by the relative of the detenue dated 19th July, 2005, which was received by the said authority on 25th July, 2005. It is evidently clear from the affidavit in reply filed by the

Deputy Secretary, Department of Food, Civil Supplies and Consumer Affairs Department, State of Gujarat, that a forwarding letter dated 5th August, 2005 from the District Collector from the office of the District Collector, Kutch-Bhuj was received by the department of Consumer Affairs, State of Gujarat on 10th August, 2005. Therefore, a records speak for itself and there is a clearly delay of about 10 days in forwarding the representation by the detaining authority to the State of Gujarat. Not only that, but, though averred by the detaining authority that the representation was forwarded to various authorities, the affidavit in reply filed by the Under Secretary of the department of Consumer Affairs, Food and Public Distribution, Union of India in the affidavit dated 23rd August, 2005 in para-5 stated that the representation dated 19th July, 2005 was not received by the concerned section in the department. Thus, the valuable right of the

detenue for expeditious disposal of the representation against the order of detention stands infringed. The delay of 10 clear days in forwarding the representation by the detaining authority is not even explained much less reasonably. Secondly, the affidavit-in-reply filed by Union of India, respondent no.4, it states about non-receipt of representation, though forwarded by the detaining authority as stated in its affidavit in reply, the detenue is entitled to the benefits and the safeguards guaranteed under Article 22 (5) of the Constitution of India

7. For the reasons recorded above, the order of detention dated 15th June, 2005 is hereby ordered to be quashed and set aside.

8. The detenue Jitendra Babulal Chavda, is ordered to be set at liberty forthwith if not required in any other offence by any other

authority.

9. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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